

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
GRECO COUSINS CONCRETE CORP.)	
)	File No. D069976
For Authorization to Operate a Private Land)	
Mobile Radio Station in the Industrial Radio)	
Service)	
)	
And License of)	
)	
BERGEN COUNTY POLICE DEPARTMENT)	
)	
To Operate Frequency Pair 477/480.5125 MHz)	
Under Call Sign WPLR685)	

ORDER ON RECONSIDERATION

Adopted: March 4, 2002

Released: March 5, 2002

By the Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (Petition) filed by Greco Cousins Concrete Corporation (Greco) on July 2, 2001.¹ Greco seeks reconsideration of the *Memorandum Opinion and Order* released by the Public Safety and Private Wireless Division (Division) on May 31, 2001.² In the *MO&O*, the Division decided that the application by CIBRO Petroleum Corporation (CIBRO) and the New York Police Department (NYPD) to concurrently assign and modify the license to operate frequency pair 477/480.5125 MHz on Station WIL489 was properly coordinated under Sections 90.135(a)³ and 90.175(e)⁴ of the Commission's Rules.⁵ Consequently, the Division dismissed Greco's competing application to operate on the same frequency pair, 477/480.5125 MHz.⁶ For the reasons set forth below, we deny Greco's Petition.

¹ Greco Cousins Concrete Corporation, Petition for Reconsideration (filed July 2, 2001) (Petition).

² Greco Cousins Concrete Corp. et al., *Memorandum Opinion and Order*, 16 FCC Rcd 11605 (WTB PSPWD 2001) (*MO&O*).

³ 47 C.F.R. § 90.135(a).

⁴ 47 C.F.R. § 90.175(e).

⁵ *MO&O*, 16 FCC Rcd at 11613-11614 ¶ 18.

⁶ *Id.* at 11614 ¶ 18.

II. BACKGROUND

2. The background of this proceeding has been discussed extensively in the *Order on Reconsideration and Order of Modification*⁷ and the *MO&O*. In the *Modification Order*, we proposed to modify the license held by the Department of Public Safety of the County of Bergen, New Jersey (Bergen County)⁸ to operate Station WPLR685 by removing frequency pair 477/480.5125 MHz and reinstated Greco's application to pending status.⁹ This decision was based on the assertion made by Greco that the Association of Public-Safety Communications Officials-International, Inc. (APCO), an FCC-certified frequency coordinator for the Public Safety Pool that certified the CIBRO-NYPD application, failed to notify the Industrial Telecommunications Association (ITA), another FCC-certified frequency coordinator, before it submitted that application to the Commission.¹⁰ Based on this assertion, we concluded, we were "persuaded that the Police Department's [NYPD] application was defective when filed because APCO failed to coordinate the Police Department's [NYPD] application with ITA."¹¹

3. On June 16 and July 27, 2000, respectively, Bergen County filed a Petition for reconsideration and protest of the *Modification Order*.¹² Bergen County asserted, among other things, that the *Modification Order* was based on an incomplete and erroneous factual record.¹³ Bergen County maintained that APCO coordinated the CIBRO-NYPD assignment and concurrent modification in accordance with the Commission's rules. Based on the additional information provided in the record, we concluded that the CIBRO-NYPD application was properly coordinated.¹⁴ Specifically, we concluded that a discussion between Russ Taylor, an attorney who was handling the CIBRO-NYPD assignment application, and Ms. Barbara Edmonds, who at the time was ITA's Spectrum Manager, constituted consent to APCO's coordination of that application.¹⁵ Thus, we decided not to modify Bergen County's license to operate Station WPLR685 by removing frequency pair 477/480.5125 MHz and we dismissed Greco's pending application for frequency pair 477/480.5125 MHz.¹⁶

⁷ Greco Cousins Concrete Corp., *et al*, *Order on Reconsideration And Order of Modification*, 15 FCC Rcd 10310 (WTB PSPWD 2000) (*Modification Order*).

⁸ On December 8, 1997, NYPD assigned its authorization to operate Station WIL489 to Bergen County. Bergen County filed a new application, which was authorized under Station WPLR685. *See* Application File No. 9712A010992 (filed Dec. 8, 1997).

⁹ *Modification Order*, 15 FCC Rcd at 10314 ¶ 10.

¹⁰ *Id.*

¹¹ *Id.*

¹² Department of Public Safety of the County of Bergen, New Jersey, Petition for Reconsideration (filed June 16, 2000) (Bergen County Petition) and Protest of the Bergen County Police Department to the Public Safety and Private Wireless Division's Order Terminating it Law Enforcement Frequencies (filed July 27, 2000) (Bergen County Protest).

¹³ Bergen County Petition at 4.

¹⁴ *MO&O*, 16 FCC Rcd at 11613-14 ¶ 18.

¹⁵ *Id.* at 11614 ¶ 18.

¹⁶ *Id.*

III. DISCUSSION

4. On July 2, 2001, Greco filed a petition to reconsider the *MO&O*. In its petition, Greco maintains that we should reverse our decision because the *MO&O* is factually and legally incorrect.¹⁷ Greco argues that the actions accepted in the *MO&O* cannot satisfy the requirement that APCO secure concurrence from ITA prior to coordinating the CIBRO-NYPD application.¹⁸ Greco maintains that any telephone conversations that took place between Mr. Taylor and Ms. Edmonds do not evidence concurrence, especially when such an oral concurrence violated ITA policies at the time and did not follow the multi-step process ITA conducts when it receives a request for coordination concurrence.¹⁹

5. On July 16, 2001, Bergen County opposed Greco's Petition.²⁰ Bergen County argues that because four years has elapsed, the time period to reconsider these actions has long passed and "[l]icensees, particularly government agencies are entitled to some reasonable reliance that a government process, after granting an authorization, means what it symbolizes."²¹ Bergen County argues that the evidence demonstrates that the frequencies were transferred in compliance with the Commission's Rules.²² On July 17, 2001, APCO opposed Greco's Petition.²³ APCO argues that "contrary to Greco's assertions, in 1996 there were not well-established, documented procedures agreed to by the coordinators for their processing of this type of application."²⁴ APCO states that the CIBRO-NYPD application was unique because "Special Industrial licensees rarely assign channels to public safety licensees in any band."²⁵ APCO further argues that the provisions of Section 90.311 of the Commission's Rules "were far from clear with regard to the coordination of such an assignment in the 470-512 MHz band, where the availability of a frequency for a particular class of user (and its coordination responsibility) could shift with assignment from one frequency pool to another."²⁶ APCO states that "[t]his uncertainty is apparently what led to Mr. Taylor's inquiry to ITA, and both he and APCO acted reasonably in relying upon ITA's response to that inquiry."²⁷ In response to APCO, Greco states that "APCO's claim that both

¹⁷ Petition at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 7.

²⁰ Department of Public Safety of the County of Bergen, New Jersey, Opposition of the Bergen County Police Department to the Petition for Reconsideration of Greco Cousins Concrete Corp. (filed July 16, 2001) (Bergen County Opposition).

²¹ *Id.* at 6.

²² *Id.* at 5.

²³ Association of Public-Safety Communications Officials-International, Inc., Opposition to Petition for Reconsideration (filed July 17, 2001) (APCO Opposition).

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

it and Bergen County's predecessor relied on Mr. Taylor's explanation of what he believed he had been told by ITA as a substitute for the normal inter-FAC coordination process strains credulity."²⁸

6. During the time period in question, Section 90.175 of the Commission's Rules provided that "[w]hen frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified frequency coordinator."²⁹ The critical question for purposes of this proceeding is whether ITA concurred in the filing of the CIBRO-NYPD application. Notwithstanding the affidavits Greco submits with its Petition, we conclude that ITA concurred in the filing of the CIBRO-NYPD application. Therefore, the CIBRO-NYPD application was properly coordinated, and the later-filed Greco application was properly dismissed.

7. Mr. Taylor stated under penalty of perjury that he contacted Ms. Edmonds on how the CIBRO-NYPD application should be coordinated. Mr. Taylor states:

Prior to submitting the NYPD application to APCO, I contacted Barbara Edmonds of ITA and sought ITA's guidance regarding the coordination requirements applicable to the Frequency. I explained to Ms. Edmonds my understanding that the Frequency was not completely a 'Special Industrial' channel and that the Frequency was also in the 'General Access Pool' and could be coordinated by APCO. I explained that, because channel availability in the General Access Pool depended on whether the Frequency would 'subsequently become unassigned' and because the Special Industrial licensee, CIBRO, was conveying its authorization to the NYPD, the Frequency became 'unassigned' to Special Industrial entities and was available in the General Access Pool. ITA agreed with me that, under this scenario, it was proper for APCO to coordinate the application, provided that I served ITA with a copy of the application.³⁰

This statement is corroborated in a letter, dated November 6, 1996, from Mr. Taylor to Rachel Mortimer of APCO.³¹ He states:

The attached FCC database printout reveals that there are no co-channel users of the frequency within 70 miles of its proposed locations. Enclosed is the application that we discussed on the phone yesterday. Please coordinate this application and forward it to the Commission for further processing. I have enclosed a check for APCO's coordination fee.

While this application proposes the use of UHF General Access Pool channels by assignment from two Special Industrial Radio Service licensees, Barbara Edmonds of the Industrial Telecommunications Association indicated that APCO coordination is permissible, provided that ITA receives a copy of the application. Ms. Edmonds can be reached at [phone number].

²⁸ Greco Cousins Concrete Corporation, Reply to Opposition at 4 (filed August 7, 2001) (Second Reply).

²⁹ 47 C.F.R. § 90.175 (1996).

³⁰ Bergen County Protest, Attachment, Declaration of Russ Taylor, ¶ 3 (filed July 27, 2000).

³¹ *Id.*, Attachment, Letter from Russ Taylor of Gardner, Carton & Douglas to Rachel Mortimer of APCO (dated Nov. 6, 1996) (Russ Taylor Letter).

Ms. Edmonds is mentioned as a contact in the text of the letter, and she is copied on the letter itself.³² Mr. Taylor then states that on November 6, 1996, he sent the CIBRO-NYPD application to APCO and a copy to ITA.³³

8. In its attempt to show that the CIBRO-NYPD application was not properly coordinated, Greco provides declarations from the following ITA employees: Ms. Edmonds,³⁴ Ila R. Dudley,³⁵ Vice President, Spectrum Management, and Robert W. Piening,³⁶ C.P.A., Director of Finance.³⁷ Ms. Edmonds states that she does not recall the conversation between her and Mr. Russ Taylor, as specified in Mr. Taylor's sworn statement of July 27, 2000, but states that a verbal concurrence was not permitted under ITA's frequency coordination procedures in effect in 1996.³⁸ Thus, she believes that she could not have issued a verbal concurrence.³⁹ Mr. Dudley states that the Coordination Log does not contain an entry for the CIBRO-NYPD application.⁴⁰ Mr. Piening states that the Receipts Log does not contain a record of a check in the amount of \$155.00 payable to ITA by Gardner, Carton & Douglas, dated November 14, 1996.⁴¹ Greco notes that although Mr. Taylor forwarded the check payable to ITA to APCO, APCO has never claimed that it forwarded the check or concurrence request to ITA.⁴²

9. We believe that the record demonstrates that Mr. Taylor did indeed contact Ms. Edmonds. Mr. Taylor has declared under penalty of perjury that he "caused" the CIBRO-NYPD application to be sent to APCO and a copy to ITA on the same day.⁴³ He has further declared under penalty of perjury, that in response to a request from Rachel Mortimer of APCO, he sent a check to APCO for \$155.00, dated November 14, 1996, payable to ITA for coordinating the NYPD application.⁴⁴

³² *Id.* at 1.

³³ Declaration of Russ Taylor, ¶ 5.

³⁴ Petition, Attachment A (Attachment A).

³⁵ Petition, Attachment B (Attachment B).

³⁶ Petition, Attachment C (Attachment C).

³⁷ We reject Bergen County's argument that 47 C.F.R. § 1.106(c) precludes the review of the affidavits of the three ITA employees. Bergen County Opposition at 3-4. The information sworn to by Mr. Dudley and Mr. Piening was contained in August 9, 2000 letter from ITA, which was submitted prior to the release of the *MO&O*.

³⁸ Attachment A at 2.

³⁹ Attachment A at 4.

⁴⁰ Attachment B at 3.

⁴¹ Attachment C at 2.

⁴² Petition at 8.

⁴³ Declaration of Russ Taylor, ¶ 5.

⁴⁴ Bergen County Protest, Attachment, Check from Gardner, Carton & Douglas payable to ITA for "NYPD application" (dated Nov. 14, 1996). ITA, however, denies receiving this check. Letter from Laura L. Smith, Executive Director, Government Relations, ITA, to D'wana R. Terry, Public Safety and Private Wireless Division, Federal Communications Commission at 2 (Aug. 9, 2000).

Moreover, it is clear not only from Mr. Taylor's statement, but also from his letter to Rachel Mortimer of APCO referencing this conversation, and from Ms. Edmonds' failure to refute it, that Mr. Taylor and Ms. Edmonds spoke. While Ms. Edmonds believes that the scenario described by Mr. Taylor would have been inconsistent with ITA's procedures, she candidly admits that she has no recollection of her discussion with Mr. Taylor. If Ms. Edmonds disagreed with Mr. Taylor's actions or believed that they were not in accord with their phone conversation, she should have corrected him and/or APCO when she received a copy of this letter. We conclude that Mr. Taylor's declaration is more specific than ITA's evidence and is corroborated by his contemporaneous letter to Ms. Mortimer. Consequently, we believe that through Ms. Edmonds, ITA had knowledge of and consented to APCO's coordination of the CIBRO-NYPD application, before ITA coordinated the Greco application. We therefore conclude that our decision in the *MO&O*, that the CIBRO-NYPD application was properly coordinated, is correct and is supported by the law and the facts.

10. We also reject Greco's argument that the *MO&O* establishes a standard that would "eviscerate" the frequency coordination process.⁴⁵ At the time the CIBRO-NYPD application was being considered by the frequency coordinators, the Commission required that ITA concur in the filing of the CIBRO-NYPD application. Based upon the record present before us, we conclude that ITA had knowledge of and consented to APCO's coordination of the CIBRO-NYPD application. The fact that ITA may not have followed its normal procedures in granting such concurrence does not vitiate its grant of consent or support the conclusion that the coordination of the CIBRO-NYPD application violated the Commission's Rules. As Greco admits, the Commission generally does not mandate the procedures by which the frequency coordinators perform frequency coordination.⁴⁶

11. On a procedural matter, we deny Bergen County's motion,⁴⁷ under Sections 1.106(a)(1)⁴⁸ and 1.1⁴⁹ of the Commission's Rules, to refer this matter to the full Commission for decision "so that it can be resolved and the seemingly endless litigation relating to this proceeding terminated."⁵⁰ Bergen County notes the importance of these frequencies and the effect of the events of September 11, 2001, on their use.⁵¹ On December 5, 2001, Greco filed a motion concurring with Bergen County's request to "bring finality to this too long-standing matter."⁵² We find the parties desire to end this "seemingly endless litigation" to be an insufficient reason, under 1.106 or 1.1 of the Commission's Rules, to show

⁴⁵ Petition at 10-12.

⁴⁶ *Id.* at 12.

⁴⁷ Department of Public Safety of the County of Bergen, New Jersey, Motion of the Bergen County Police Department to Refer Petition for Reconsideration to the Full Commission (filed Nov. 28, 2001) (Bergen County's Motion).

⁴⁸ 47 C.F.R. §1.106(a)(1).

⁴⁹ 47 C.F.R. § 1.1.

⁵⁰ Bergen County's Motion at 2.

⁵¹ *Id.*

⁵² Greco Cousins Concrete Corporation, Reply to Motion of the Bergen County Police Department to Refer Petition for Reconsideration to the Full Commission at 1 (filed Dec. 5, 2001).

that this proceeding should be reviewed by the full Commission. Accordingly, we deny Bergen County's motion, affirm the *MO&O*, and deny Greco's Petition.

IV. CONCLUSION AND ORDERING CLAUSES

12. For the reasons stated above, we conclude that the *MO&O* is legally and factually correct. We further conclude that the assignment and concurrent modification from CIBRO to NYPD was properly coordinated by APCO with the knowledge and consent of ITA. Therefore, CIBRO assigned a valid license to operate frequency pair 477/480.5125 MHz to NYPD, which in turn assigned a valid license to Bergen County. We therefore deny Greco's Petition.

13. ACCORDINGLY, IT IS ORDERED THAT pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed July 2, 2001 by Greco Cousin's Concrete Corporation IS DENIED.

14. IT IS FURTHER ORDERED THAT the "Motion of the Bergen County Police Department to Refer Petition for Reconsideration to the Full Commission" filed by the Bergen County Police Department on November 28, 2001, IS DENIED because Bergen County has not demonstrated good cause under Sections 1.1 and 1.106(a)(1) of the Commission's Rules, 47 C.F.R. §§ 1.1 and 1.106.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Barry J. Ohlson
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